

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 19-cv-00901-WJM-NRN

MICHAELLA LYNN SURAT,

Plaintiff,

v.

RANDALL KLAMSER, in his individual capacity,

Defendant.

DISCOVERY DISPUTE STATEMENT

Overview:

Plaintiff's counsel sought to depose the City of Fort Collins. In service of this discovery, Plaintiff's counsel sent a 30(b)(6) notice on May 7, 2020 to counsel for the City of Fort Collins (who are also counsel for Defendant in this matter), asking the City of Fort Collins to identify a representative that could testify competently as to the following topics:

1. The circumstances relating to the use of force against Ms. Surat including, but not limited to, whether the use of force was in accordance with Fort Collins' training, customs, practices, and policies;
2. The facts and circumstances relating to the internal investigation into the use of force against Ms. Surat including, but not limited to, any internal affairs investigations that were conducted, any discipline that was imposed, or any other aspect of any investigation that was undertaken in the use of force;
3. Policies, training, and customs relating to the use of force, including, but not limited to, policies, training, and customs related to the rowing-arm takedown maneuver and policies, training, and customs related to use of force against individuals who are resisting arrest;

4. Supervision, including performance evaluations, early intervention, and reviews of uses of force against citizens by supervisors or others in the chain of command;
5. Inner- or inter- departmental internal investigations, including the investigative process, discipline, and termination;
6. Training, implementation and enforcement, including academy training requirements, remedial training requirements, and in-service training requirements;
7. Other instances of City of Fort Collins law enforcement interactions with people that resulted in a claim or complaint (formal or informal, broadly defined) of excessive force, including but not limited to the allegations of such claims or complaints outlined in Plaintiff's Complaint.

Exhibit 1. Counsel for Defendant did not respond to this letter until July 7, 2020. In that response, counsel for Defendant objected to identifying a 30(b)(6) representative to testify as to every topic outlined above, except as to topic number two: “[t]he facts and circumstances relating to the internal investigation into the use of force against Ms. Surat including, but not limited to, any internal affairs investigations that were conducted, any discipline that was imposed, or any other aspect of any investigation that was undertaken in the use of force.” **Exhibit 2.** Last week, counsel for both parties had a phone conference and could not resolve this issue.

Plaintiff's Position:

Plaintiff is entitled to discovery that is fully relevant to her claims against the City of Fort Collins. While the claims against the City of Fort Collins were previously dismissed, they were dismissed without prejudice, [Doc. #84], and Plaintiff has moved to amend her Complaint to re-assert her claims in accordance with the Court's dismissal order. [Doc. #96]. Defendant did not object to Plaintiff's motion to amend. [Doc. #97].

Courts have held that the topics that Plaintiff has outlined in her 30(b)(6) deposition notice are “categories of information” that are “essential” to *Monell* claims.

Detoy v. City & County of San Francisco, 196 F.R.D. 362, 365 (N.D. Cal. July 19, 2000); see also *White v. City of Cleveland*, 417 F. Supp. 3d 896, 910 (N.D. Oh. 2019); *Bishop v. Cnty. of Suffolk*, 248 F. Supp. 3d 381, 395 (E.D.N.Y. 2017); *Buie v. District of Columbia*, 327 F.R.D. 1, 12 (D.D.C. 2018). Given that Defendant did not object to Plaintiff amending her Complaint to re-assert her *Monell* claim against the City of Fort Collins, Plaintiff is entitled to discovery as to that claim. Therefore, Plaintiff asks that this Court order that the City of Fort Collins, through Defendant’s counsel, identify a 30(b)(6) representative that is knowledgeable as to each topic so that Plaintiff may move forward with a 30(b)(6) deposition of the City of Fort Collins.

Defendant Randy Klamser and City of Fort Collins’ Position:

“While Rule 26 of the Federal Rules of Civil Procedure contemplates liberal discovery of matters that may be reasonably calculated to lead to admissible evidence, a party does not have an unfettered or absolute right to discovery.” *White v. Deere & Co.*, 2015 U.S. Dist. LEXIS 114598 at *15 (D. Colo., Aug. 28, 2015, Civil Action No. 13-cv-02173-PAB-NYW) referring to *Witt v. GC Servs. Ltd. P’ship*, 307 F.R.D. 554, 559 (D. Colo. 2014). Here, the City of Fort Collins (“City”) was dismissed pursuant to the Court’s February 24, 2020 Order (*See* ECF 84). In dismissing the City, the Court concluded, “Surat’s *Monell*-related allegations are essentially twofold: (1) a Fort Collins internal affairs investigation concluded that Klamser ‘acted lawfully and in accordance with [Fort Collins police] policy,’ creating a ‘reasonable inference that the city’s policy and training lead officers to act unconstitutionally’ (¶ 47); and (2) five other allegedly similar use-of-force incidents, some of them leading to six-figure civil settlements, occurred in the timeframe between 2013 and 2018, thereby demonstrating that excessive

force is a pattern among Fort Collins police officers and Fort Collins is doing nothing to stop it (§§ 50–56).” (ECF 84 at 16, citing to ECF 1, §§ 47 & 50-56). In concluding the Plaintiff failed to properly plead a *Monell* claim against the City, the Court properly concluded that “Surat’s allegations are not tailored to the burden she faces in this case.... (t)o avoid violating *Heck*, it must be taken as given that Klamser was attempting to effect Surat’s arrest through a lawful use of lesser force, and that Surat’s resistance amounted to physical force or violence against Klamser and/or threatened him with substantial bodily harm.” (ECF 84 at 16-17). Consistent with Plaintiff’s attempt to allege a claim of *Monell* liability against the City, and as recognized by the Court, “Surat does not explain why an internal affairs investigation clearing Klamser under those circumstances could plausibly suggest unconstitutional policies, and Surat has not alleged any prior use-of-force by a Fort Collins police officer that comes close to this factual scenario.” (ECF 84 at 17). Applying the Court’s reasoning to the request for a 30(b)(6), the topics presented are the exact type of “unfettered discovery” to which Plaintiff is not entitled.

Furthermore, Plaintiff’s argument with respect to Officer Klamser’s position on an amendment of the Complaint, is taken out of context. In particular, in granting the City’s Motion to Dismiss, the Court concluded that it “is skeptical that Surat could amend to state a viable claim, but the Court cannot say with certainty that Surat could never allege additional facts which would plausibly suggest *Monell* liability.” (ECF 84 at 17). Given the differing (a lesser) standard for amending a complaint versus dismissal of the claim, no objection by Officer Klamser (or the City), was lodged. Nonetheless, any such position does not waive the right to challenge any new allegations against the City, should Plaintiff’s Motion be granted.

Plaintiff's request for a 30(b)(6) designee, should be precluded.

Dated this 23rd day of July, 2020.

KILLMER, LANE & NEWMAN, LLP

s/ *Andy McNulty*

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Counsel for Plaintiff

EXHIBIT 1

KILLMER, LANE & NEWMAN, LLP

ATTORNEYS AT LAW

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May 7, 2020

VIA EMAIL

Mark Ratner
Brenden Desmond
Hall & Evans, LLC
1001 Seventeenth Street, Ste 300
Denver, CO 80202
303-628-3492
ratnerm@hallevans.com
desmondb@hallevans.com

RE: *Surat v. Klamsner, et al.*

Dear Mark and Brenden:

I am writing to request identification of the individual(s) best qualified to provide Rule 30(b)(6) deposition testimony pertaining to the City of Fort Collins’ customs, policies, procedures, and actual practices for law enforcement patrol officers in the following areas:

1. The circumstances relating to the use of force against Ms. Surat including, but not limited to, whether the use of force was in accordance with Fort Collins’ training, customs, practices, and policies;
2. The facts and circumstances relating to the internal investigation into the use of force against Ms. Surat including, but not limited to, any internal affairs investigations that were conducted, any discipline that was imposed, or any other aspect of any investigation that was undertaken in the use of force;
3. Policies, training, and customs relating to the use of force, including, but not limited to, policies, training, and customs related to the rowing-arm takedown maneuver and policies, training, and customs related to use of force against individuals who are resisting arrest;
4. Supervision, including performance evaluations, early intervention, and reviews of uses of force against citizens by supervisors or others in the chain of command;
5. Inner- or inter- departmental internal investigations, including the investigative process, discipline, and termination;

*Also admitted to practice in California
+Also admitted to practice in New York
^Also admitted to practice in Missouri
°Of Counsel

Peter Morales, Isabelle Evans
September 9, 2019
Page (2)

6. Training, implementation and enforcement, including academy training requirements, remedial training requirements, and in-service training requirements;
7. Other instances of City of Fort Collins law enforcement interactions with people that resulted in a claim or complaint (formal or informal, broadly defined) of excessive force, including but not limited to the allegations of such claims or complaints outlined in Plaintiff's Complaint.

Please contact us at your earliest convenience with the identity of the individual(s) best suited to provide such testimony and the dates of their availability. We would like to take these depositions during the month of May in accordance with the scheduling order in this matter. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'AMcNulty', with a long horizontal flourish extending to the right.

Andy McNulty

AM/ja

cc: Michaella Surat

EXHIBIT 2



Mark S. Ratner
ratnerm@hallevans.com
(303) 628-3337
Admitted in Colorado, Arizona, Illinois, Michigan, Kansas and U.S. Virgin Islands

File No. 6139-82

July 6, 2020

Andy McNulty, Esq.
Killmer, Lane & Newman, LLP
1543 Champa Street, Suite 400
Denver, CO 80202

RE: *Surat v. Klamser*

Dear Mr. McNulty:

We are in receipt of your correspondence dated May 7, 2020, and email containing said correspondence dated June 11, 2020, which purports to set forth 30(b)(6) topics directed to the City of Fort Collins.

As you know the claims against the City in the *Surat* matter were dismissed. The only remaining claim is, therefore, brought pursuant to the Fourth Amendment and is against Officer Klamser.

With that in mind, most of the topics proposed in your May 7th correspondence address issues which are irrelevant to the only remaining claim against Officer Klamser, and which include training, customs, practices, and policies of the City. The exception is, perhaps, topic number 2. However, although an internal investigation was conducted, as you know there was no discipline imposed. The City will, therefore, provide a representative to address topic number 2 to the extent possible, but will object to any of the other topics identified.

Please let me know if you would like to discuss further.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mark S. Ratner', is written over a light blue circular stamp.

Mark S. Ratner, Esq.
of Hall & Evans, L.L.C.

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